IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No.11446 of 2007
Date of decision: 7.9.2007

Anuradha Sharma

-----Petitioner

Vs.

Chandigarh Administration and others

-----Respondents

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE AJAI LAMBA

Present: Mr. Chetan Mittal, Advocate for the petitioner.
Mr. Sanjiv Kaushik, advocate for respondent Nos. 1 & 2.
Mr. Ashok Aggarwal, Sr. Advocate
with Mr. Vikram Aggarwal, Advocate for respondent No.4.

JUDGMENT:

This order will dispose of Civil Writ Petition No.11446 of 2007 filed by Anuradha Sharma and Civil Writ Petition No.11470 of 2007 filed by Nitin Jindal.

In both the petitions, challenge is to admission given under the NRI quota to MBBS Course.

In CWP No.11446 of 2007, case of the petitioner is that as per prospectus Annexure P.1, it was stipulated that no alteration will be allowed in the application form after its submission; application received late or incomplete will be rejected; under the NRI category, first preference will be given to NRI candidates who

had ancestral background of Chandigarh and admission will be on the basis of merit determined as per marks in Physics, Chemistry and Biology (PCB). For NRI category, in the form prescribed, inter-alia, following documents were required:-

> "2. Photocopy of certificate of having passed pre-medical/10+2+3 showing equivalent examination from any foreign university/board showing detailed mark/explanation sheets of grades in percentage."

The petitioner applied with the relevant certificates mentioning that average of marks obtained by her was 90.33%. Respondent No.4 Rosanna Kaur Jhawar in her application form Annexure R.4/3 mentioned as under:-

	%age of Marks	Grade point/Average score
i) Physics	90-100%	A
ii)Chemistry	90-100%	A
iii)Biology	90-100%	A
iv)English	90-100%	A

She annexed certificate from the school Annexure R-4/7 to the effect that valuation of marks of Grade 'A' was equal to 90%- 100%.

On 10.7.2007, vide Anneuxre P.3, a notice of deficiency was put up and against the name of respondent No.4, it was, inter-alia, mentioned that percentage of marks had not been given.

Again on 24.7.2007, a second notice of deficiency was put up to the effect that if percentage of the score was not given, no percentage score could be allotted. However, respondent No.4 was given admission on 27.7.2007, vide Annexure P.5 by treating her to have obtained 94% marks. In proceedings, Annexure P.8, it was mentioned that she gave a certificate that Grade 'A' was equal to 94-96%.

Contention raised on behalf of the petitioner is that since in the original application, respondent No.4 had described her grade as 'A' equal to 90-100%, subsequent certificate could not be considered for claiming higher percentage. Subsequent certificate Annexure R4/15 issued by the Sunny Hills High School gives the following percentage range of grades:-

"A+ = 97% -100%
A = 94% - 96%
A - = 90% -93%."

Subsequently, the petitioner has filed Annexure P.9 dated 23.8.2007 from the same school wherein grade 'A' is described as equal to 90% to 100%. It has been further mentioned therein that grading policies vary from teacher to teacher. Most teachers use 10% scale i.e. 90% to 100%.

Second contention raised on behalf of the petitioner Anuradha Sharma is that respondent No.4 could not be given

admission in the category of ancestral background of Chandigarh, for which the requirement laid down was owning of property in the last five years by grandparents/parents of the candidate. Further requirement was that the candidate should not have obtained the benefit of residence elsewhere. Reference has been made to Annexure P.4. It was submitted that the certificate Anneuxre R4/6 to the effect that grandfather of respondent No.4 owned property for the last five years was wrong, as admittedly grandfather of respondent No.4 died in the year 1992 as per certificate Annexure P.10. It was also stated that respondent No.4 had applied in Punjab as per Annexure P.6 issued by the Baba Farid University.

Learned counsel for the petitioner relied upon Full Bench judgement of this Court in **Rahul Prabhakar v. Punjab Technical University, Jalandhar**, 1997(3) SCT 526, to the effect that last date for filing/completing application has to be strictly followed. Further reliance has been placed on DB judgement of this Court in **Manisha Bansal v. Baba Farid University of Health sciences, Faridkot and others,** CWP No.11030 of 2003, decided on 24.5.2004, to submit that applying for admission amounts to taking advantage of residence requirement. It was submitted that the said judgement was further explained in **Bharat Gupta v. State of Haryana**

(P&H) (DB), 2006(2) SCT 71 but the judgement in **Manisha Bansal** (supra) being clear on the point, respondent No.4 should be treated to have taken benefit elsewhere on account of which she could not claim ancestral background of Chandigarh in terms of requirement of Annexure P.4.

Learned counsel for respondent No.4 opposed the submission made on behalf of the petitioner by submitting that as per the prospectus, NRI candidates were not required to give detailed marks but were free to give explanation sheets of grades in percentage and once the said explanation sheet had been duly filed by respondent No.4, requirement in deficiency notice was illegal. Percentage of 90-100% should have been treated equal to 95% as was done in the previous year. Reference has been made to averment in affidavit dated 27.8.2007, Para 4. It was submitted that though, Grade 'A' had a range of 90%-100%, there was further gradation as per certificate dated 25.7.2007, Annexure R4/15 reproduced above. Accordingly, the Admitting Authority was justified, on that basis, in accepting the percentage of respondent No.4 as 94% in the proceedings for admission, Annexure P.8. It was further submitted that respondent No.4 applied in Baba Farid University but was not given admission and in such a situation, judgement of this Court in **Bharat Gupta** (supra) was

applicable. It was also explained that though, grandfather of respondent No.4 died in the year 1992, requirement of Annexure P.4 was met. The requirement of “last atleast five years” was only in respect of property being in the name of the grandfather and alternatively, since the requirement of residence was for a period of five years at any time since the origin of Chandigarh, requirement of owning of property will also be read as being applicable at any time since the origin of Chandigarh. It was also submitted that after the death of the grandfather, though uncle of the candidate had applied for entering of his name on the basis of family settlement, father of the candidate was also one of the heirs whose name could be entered in record.

We find that as per application form of respondent No.4, Grade 'A' was mentioned as range of 90-100%, while as per subsequent certificate dated 25.7.2007, Grade 'A' was bifurcated into three categories 'A -', 'A' and 'A+' with different range of percentage. The petitioner has referred to letter dated 28.8.2007, Annexure R4/17 and Annexure P.9 to the effect that grading policy varied from teacher to teacher. It was submitted that since the policy varied from teacher to teacher, it could not be taken that for subjects of Physics, chemistry and Biology, the said policy had been followed. The certificate Annexure

R4/15 dated 25.7.2007 was general and on that basis, percentage of marks could not have been taken to be 94%. The Admitting Committee should consider the matter afresh.

Learned counsel for the official respondents also submitted that the requirement of owning property was for "the last five years" and not at any time since the origin of Chandigarh but in the case of respondent No.4, the authorities had gone by certificate Annexure R4/6 dated 20.7.2007 without being conscious of fact that Gopal Krishan, father of respondent No.4 had already died and on that ground, the respondents are willing to examine the matter once again after hearing all concerned.

In view of above, we are of the view that matter should be considered by the Admitting Authority once again after considering the view-point of concerned candidates. The validity of admissions given will abide by further orders of the Admitting Authority.

In CWP No.11470 of 2007, case of the petitioner is that respondent No.6 had obtained 92.66% and respondent No.7 had obtained 90.83% marks, while the petitioner had obtained 92.67%. The petitioner's case was rejected on the ground that his parents did not own property in Chandigarh in the last five years. Reliance on behalf of the petitioner has been

placed on Annexure P.5 to the effect that his father had 20% share during 1981-2004 but not for “last atleast five years”.

Since we have directed the matter to be reconsidered in CWP No.11446 of 2007, inter-alia, for taking a conscious decision on the issue whether the requirement of owning the property was during any period of five years or during the last five years and its effect on admissions made, we leave this question also to be decided by the Admitting Committee after considering the view-point of the concerned candidates.

In view of urgency involved, the Admitting Committee will take a decision within one week of receipt of a copy of this order.

The writ petitions are disposed of.

(Adarsh Kumar Goel)
Judge

September 7,2007 (Ajai Lamba)
'gs' Judge